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CHARLES ELMORE CRUMLEY

IN THE

**Supreme Court of the United States**

OCTOBER TERM, 1941.

No. 95.

THE PEOPLE OF PUERTO RICO,

*Petitioner.*

v.

RUSSELL & CO., S. EN C.,

*Respondent.*

**BRIEF FOR RESPONDENT.**

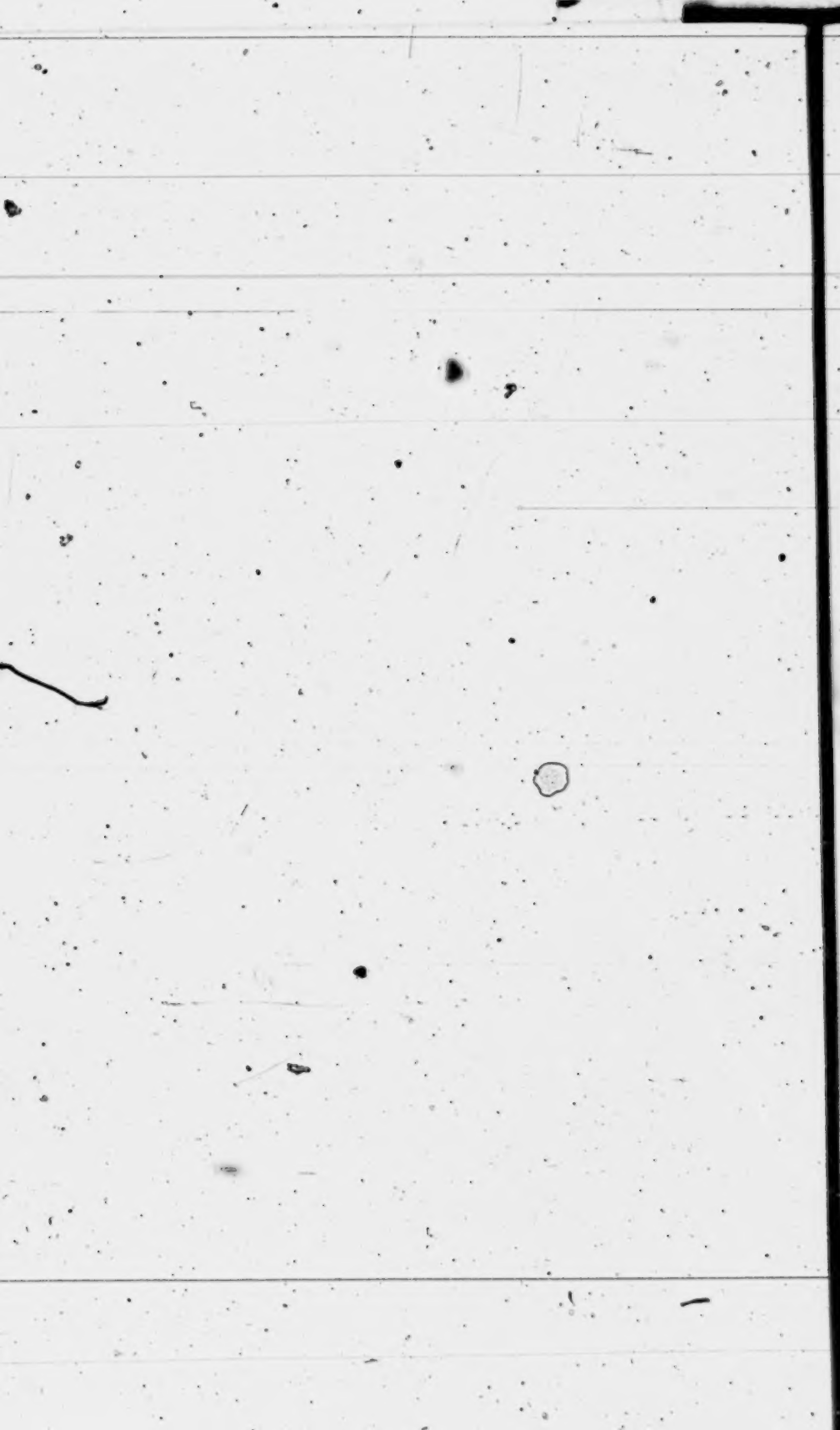
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Respondent.

**BRIEF FOR RESPONDENT.**

**Opinions Below.**

The opinion of the Circuit Court of Appeals is reported in 118 F. (2d) 225 (R. 180).

The opinion of the Supreme Court of Puerto Rico is reported in 56 Decisiones de Puerto Rico (Spanish edition) 343. A translation of the opinion will be found in the Record, page 148.

The opinion of the District Court of San Juan is not officially reported but will be found in the Record, page 54.

**Jurisdiction.**

The case is here on writ of certiorari to the Circuit Court of Appeals for the First Circuit. Jurisdiction rests on Section 240 (a) of the Judicial Code of the United States, as amended by the Act of February 13, 1925, c. 229, 43 Stat. 938; Title 28 U. S. C., §347.

### Questions Presented.

1. Does Act No. 49 of 1921 (Laws of Puerto Rico 1921, p. 366) imposing a tax upon waters supplied to respondent from the Jacaguas River in Puerto Rico impair the obligations of the irrigation contract dated August 26, 1914 between the Acting Commissioner of the Interior of Puerto Rico, as party of the first part, and Fortuna Estates, party of the second part (R. 22, 24 to 38, 76), and the irrigation contract dated August 26, 1914, between said Acting Commissioner, as party of the first part, and José A. Poventud and others, parties of the second part (R. 41 to 53, 79), in contravention of the following provision of the bill of rights contained in the Puerto Organic Act:

"No law impairing the obligation of contracts shall be enacted" (Title 48 U. S. C. §737)?

If this Court reaches the conclusion that the decision of the Circuit Court of Appeals, 118 F. (2d) 225 (R. 180), is correct in holding that said Act No. 49 is invalid as being in violation of said provision of the Organic Act, no further questions will be presented. But if there be doubt as to the correctness of said decision the following additional questions are presented:

2. Is said Act No. 49 invalid in that it delegates to administrative officers the legislative functions of determining the amount of tax to be levied and of levying the tax, in contravention of Section 25 of the Organic Act (Title 48 U. S. C. §811) vesting all legislative powers in the Puerto Rico legislature?

3. Is said Act No. 49 invalid as being in contravention of the due process provision of the bill of rights in the



Organic Act (Title 48 U. S. C. §737) and in violation of the Treaty of Paris, by taking away respondent's water rights under the Spanish concessions owned by respondent?

4. Does said Act No. 49 further contravene the due process clause by failing to grant to the taxpayer an opportunity for a hearing before the taxes become fixed?

5. Is said Act No. 49 invalid in that it denies to respondent the equal protection of the laws and further violates the requirement of the Organic Act that the rule of taxation in Puerto Rico shall be uniform (Title 48 U. S. C. §737)?

### **Statutes.**

The provisions of the Organic Act hereinabove referred to, as well as the complete text of said Act No. 49 of 1921 and applicable portions of other Insular statutes, will be found in the appendix.

### **Statement of the Case.**

This appeal is from a judgment of the Circuit Court of Appeals for the First Circuit entered March 10, 1941 reversing a judgment of the Supreme Court of Puerto Rico and remanding the case to that court with direction to order the complaint dismissed. The case arose in the District Court of Puerto Rico for the District of San Juan and was a suit to recover taxes with surcharges alleged to be due under an act of the legislature of Puerto Rico known as Act No. 49 of 1921, approved July 8, 1921 entitled "An Act Fixing a Tax on Certain Lands using Water from the Southern Coast Public Irrigation System, on which lands



no Tax Whatsoever was Levied under the Public Irrigation Law, and for Other Purposes," (Laws of Porto Rico, 1921, p. 336). The case was tried before said District Court without a jury upon a stipulation of facts and certain additional evidence offered by the plaintiff (R. 57, 73, 82, *et seq.*) and resulted in a judgment overruling the amended complaint (R. 65). This judgment was reversed by the Supreme Court of Puerto Rico on March 15, 1940, and respondent was directed to pay to the petitioner \$61,617.04 with interest from and after June 24, 1930, plus the sum of \$36,051.84 with interest from June 8, 1934 (R. 169).

### *The Facts.*

The case is fully stated in the opinion of the court below (R. 180, *et seq.*), but we think it may be helpful to review here the salient facts. The word "respondent" as used herein shall include the predecessors in title of respondent as to part of the land involved in this litigation and the respondent's lessors and the predecessors in title of such lessors as to other portions of the land involved in this litigation.

By virtue of ancient concessions and royal decrees of the Spanish Crown and of certain users and prescriptions, respondent for many years has been the owner of water rights entitling it to take water, both ordinary flow and torrential, from the Jacaguas River which flows into the Caribbean Sea on the southerly side of Puerto Rico (R. 74, 77). These rights permitted respondent to take water through intakes constructed by it in the aggregate amount of 12,612.1 acre-feet per year (R. 74, 77), in addition to torrential water without limit as to quantity except as limited by the size and location of the torrential intakes (R. 75,

78). An acre-foot of water is the amount required to cover one acre to a depth of one foot (Funk & Wagnalls New Standard Dictionary, 1937).

The People of Puerto Rico undertook the construction of a public irrigation system on the south side of Puerto Rico. Such project necessitated the erection of a dam for the impounding and storage of part of the waters of the Jacaguas River, and this resulted in the building of the Guayabal Dam extending across the bed of the river above respondent's intakes (R. 75). Some method had to be found whereby the rights of riparian owners below the dam could be acquired or suitably protected, and pursuant to the provisions of the Public Irrigation Law as from time to time amended, this could be accomplished by one of three methods:

1. The People of Puerto Rico could condemn existing water rights and pay the owners the fair value thereof in cash (Laws of P. R., Sp. Sess. 1908, Sec. 12, App., p. 39). This was not done.

2. The owners could relinquish their concessions, have them valued as provided in the Irrigation Law and be paid the amount thereof by receiving credits upon their proportionate share of the expense of the construction and operation of the system (Laws of P. R., Extr. Sess. 1913, Secs. 2, 7, 11, App., pp. 41, 42, 43). This was not done.

3. With respect to the owners whose rights were not condemned or relinquished as above set forth but whose source of supply was impaired or destroyed by the construction or operation of the irrigation system, Section 13 of the Act of 1913 (Laws of P. R., Extr. Sess., 1913, App., p. 45) provides:

"In the case of any land carrying a water right or concession of which the source of supply is destroyed or impaired by the construction or operation of the irrigation system, which shall not have been relinquished or surrendered to The People of Porto Rico, such land shall be entitled to receive from the irrigation system an amount of water which is the reasonable equivalent in value of the said water right or concession."

The statute then empowers the Commissioner to negotiate with the owners of such water rights or concessions and to enter into contracts with them as to the amount of water to be delivered *as the fair equivalent* in value of such rights and concessions and as to the time, place and conditions of delivery thereof (App., pp. 45, 46). This was the method adopted with respect to respondent.

Under date of August 26, 1914 two contracts, substantially identical in all important particulars, were entered into by the Insular Government with the predecessors in title of respondent and of respondent's lessors. The contracts are attached to the complaint and set forth in full in the record as Exhibits A and B (R. 24, 76; 41, 79). The preambles of the contracts recite the ownership of the land abutting on the Jacaguas River, the claims of respondent to the water concessions, the construction of the irrigation system which might impair those claims, the fact that the water rights and concessions were not relinquished or surrendered (under plans Nos. 1 or 2, *supra*), and that the amount of water taken by respondent for irrigation varied from month to month in accordance with rainfall so that it was impossible to determine in advance the exact amount of water to which respondent was entitled for a fixed period of time. The preambles further declared the readiness of

the Insular Government to deliver to respondent the amount of water to which the latter was entitled under its concessions, but in order to facilitate and make more certain the operation of the dam and the irrigation system of which it was a part, it was stated to be the desire of the Government to determine and agree upon an amount of water which, delivered regularly, would be considered the fair equivalent in value for irrigation purposes of the amounts which respondent would ordinarily take and use under its rights and concessions. The preambles then recited the authority of the Commissioner of the Interior, under the above quoted Section 13 of the amendment to the Public Irrigation Law of August 8, 1913, after consultation with the Attorney General of Puerto Rico as to the validity and legal status of the water rights and concessions of respondent, to enter into the agreement for delivery to respondent of an amount of water equivalent to the water taken and used under its rights and concessions and as to the time, place and conditions of delivery thereof (R. 24 to 27; 41 to 44).

There followed elaborate and carefully worked out provisions for the delivery of water by the Insular Government to respondent. In brief summary, the contracts provided for delivery of 8,258.98 acre-feet of water per year under one contract (R. 27) and 946.55 acre-feet per year under the other contract (R. 45) making a total of 9,205.53 acre-feet per year. Thus respondent accepted in lieu of its right to 12,612.1 acre-feet per year under the concessions a reduction of substantially 27% in the amount of water to be taken from the river, other than torrential water. The contracts further provided for the manner of delivery of such water at intakes located on the respective estates and they provided for delivery in regular daily amounts

(R. 27, 28, 45). Further provision was made for the taking of surplus waters within certain limits, for the taking of waters derived through underground filtration or seepage from behind the dam, and for the protection of respondent's right to take torrential waters from the river (R. 29, 30, 46, 47). Further provision was made that respondent should exercise its old concessions during ten days in each year to prevent their being destroyed by non-use (R. 30, 47). The contracts protected the claims of respondent to the ancient rights and provided for the exercise thereof if the operation of the irrigation system should be suspended or discontinued (R. 33, 34, 50, 51). The other detailed provisions of the contracts do not seem to require summary here.

The Public Irrigation Law as it existed at the time of the making of these contracts provided for the assessment upon lands in the irrigation district of a uniform amount per acre to defray the cost of construction, maintenance and operation of the system and embraced within its provisions those persons who had no water rights as well as those whose rights had been condemned or relinquished (App., pp. 43-45). But no attempt was made to tax owners of water rights entering into contracts such as those involved in this case.

Shortly after the making of the contracts a controversy arose between the Government and respondent with regard to surplus waters in the river, the Government claiming the right to sell such waters and respondent denying that right under the contracts. After somewhat extended litigation the controversy was finally resolved in favor of respondent on October 28, 1920 by a decision of the Circuit Court of Appeals for the First Circuit in *People of Porto Rico v. Russell & Co.*, 268 Fed. 723. By this decision the Government was restrained from diverting from re-



spondent the surplus waters to which it was entitled under the contracts. The validity of the contracts was sustained and it was held that the ancient concessions of respondents were suspended during the existence of the contracts. (268 Fed. at p. 729).

There the matter stood for about eight months. At the next session of the legislature of Puerto Rico there was enacted Act No. 49 of 1921 (Laws of P. R., 1921, p. 366; approved July 8, 1921), the avowed purpose of which was to compel those in the position of respondent to pay, in the guise of a special tax, for the water received by way of exchange under the contracts. This is shown by the title of the Act: "An Act Fixing a Tax on Certain Lands using Water from the Southern Coast Public Irrigation System, on which lands no Tax Whatsoever was Levied under the Public Irrigation Law, and for Other Purposes", and by the first section of the act which reads as follows:

"That a special tax is hereby levied in addition to other taxes already fixed by law, on all parcels of land which for irrigation purposes are supplied with water from the southern coast public irrigation system constructed and in operation pursuant to the provisions of the Public Irrigation Law and amendments thereto, but which under the present Irrigation Law in no way contribute to the payment of expenses for the maintenance of said system."

(The act is set forth in full in the appendix (p. 35). The second section of the act sets out the manner in which the taxes should be computed. After directing the Treasurer to ascertain or to fix the total number of acres receiving water from the irrigation system, including lands covered by contracts such as exist in the case at bar, he was required to take the amount estimated by the Commissioner of the

Interior as necessary to defray the cost of operating and maintaining the system for the following year and to add thereto or subtract therefrom any deficit or surplus certified by the Commissioner of the Interior as remaining after the payment of expenses for operating and maintaining the system during the preceding year. The amount so determined was to be divided by the total number of acres computed as above stated and the result constituted the tax per acre on all tracts supplied with water from the irrigation system which in no other manner are subject to the payment of a tax to meet the cost thereof.

The law was obviously aimed solely at those in the position of this respondent.

In the course of the trial it appeared that respondent during the operation of the contracts has received certain benefits because of the regular delivery of water (R. 85, 91, 92) but has not received any water in excess of the amount stipulated (R. 84, 92, 93). It was also admitted by petitioner and its counsel that the irrigation system as affected by the existence of the contracts was of great benefit to the People of Puerto Rico (R. 94, 97).

### *History of This Litigation.*

In a suit brought by respondent in 1924 in the District Court of the United States for Puerto Rico, the Government was enjoined in June, 1926, from attempting to collect any tax under Act No. 49 (R. 81). The Government appealed, but while the appeal was pending, Congress passed the Act of March 4, 1927 (44 Statutes at Large, 1421) amending Section 48 of the Organic Act by inserting therein the provision:

"That no suit for the purpose of restraining the assessment or collection of any tax imposed by the laws of Porto Rico shall be maintained in the District Court of the United States for Porto Rico."

Following the decision of the Supreme Court in *Smallwood v. Gallardo*, 275 U. S. 56, holding that tax injunction cases pending at the time of the passage of the Act of March 4, 1927 abated, the Circuit Court of Appeals for the First Circuit remanded the case to the District Court with directions to dismiss the suit for want of jurisdiction (*Gallardo v. Havemeyer*, 21 F. (2d) 1012).

On April 23, 1928 Congress passed an Act for the relief of taxpayers whose suits had been dismissed by reason of the decision in *Smallwood v. Gallardo*, *supra* (45 Statutes at Large, 447), and said statute provided that in cases pending March 4, 1927 where the taxpayer had obtained an injunction prior to such date restraining the assessment or collection of a Puerto Rico tax, after trial on the merits in the District Court of the United States, the enforcement of any such tax should thereafter be "by a suit at law instead of by attachment, embargo, distraint, or any other form of summary administrative proceeding".

As a result of the passage of this Act, the People of Puerto Rico instituted this action.

The action was originally brought in the Insular District Court for the Judicial District of San Juan and was removed to the District Court of the United States for Puerto Rico on the ground of diversity of citizenship. After a trial on the merits the said United States District Court held that said Act No. 49 was invalid on the ground that it impaired the obligations assumed by the Government of Puerto Rico under the aforesaid contracts, and on the other grounds mentioned in our Summary of Argument.



(*infra*, p. 13; see Record on prior appeal to this Court, October Term 1932, No. 492, pp. 68, 69).—Pursuant thereto judgment was entered on December 21, 1931 dismissing the complaint.

On appeal the Circuit Court of Appeals for the First Circuit affirmed the judgment of the District Court upon the ground that the case had been properly removed to the federal court, that Act No. 49 impairs the obligation of the contracts of August 26, 1914 and that it was void for the further reason that it delegated to administrative officers the legislative function of levying taxes (*People of Porto Rico v. Havemeyer*, 60 F. (2d) 10).

The case thereafter came to this Court on certiorari, and it was held that this respondent for purposes of jurisdiction of the federal court should be regarded as a legal entity with its domicile in Puerto Rico and that the suit had been improperly removed to the federal court (*People of Porto Rico v. Russell & Co., et al.*, 288 U. S. 476). The Court did not consider any of the constitutional questions involved in this appeal but remanded the case with instructions that it be further remanded to the Insular Court from which it was removed.

As the result of the last mentioned decision the case was remanded to the Insular Court. The complaint was amended to include taxes and surcharges under Act No. 49 for the period subsequent to the filing of the original complaint and a trial followed in the Insular District Court. Said District Court followed the opinion in *People of Porto Rico v. Havemeyer*, 60 F. (2d) 10, *supra*, and dismissed the complaint on the ground that the said Act was unconstitutional (R. 54, 65). On appeal the Supreme Court of Puerto Rico refused to follow the said decision of the Circuit Court of Appeals and rendered judgment for the Government,

holding that Act No. 49 did not violate any of the provisions of the Organic Act (R. 148 *et seq.*). It was on appeal from the last mentioned decision that the Circuit Court of Appeals rendered the judgment which is under review in the case at bar.

The Court below held that Act No. 49 is invalid in that it impairs the obligations of the 1914 contracts (R. 180). The other constitutional questions were not passed upon (R. 191).

### Summary of Argument.

I. Act No. 49 of 1921 impairs the obligations of the contracts of August 26, 1914 in that it deprives respondent of the benefits thereof by subjecting respondent to heavy charges in the guise of taxation. The Act was expressly designed for this purpose. The constitutional prohibition against impairment of obligations of contract contained in the Organic Act applies as well to a contract to which the sovereign is a party as to any other type of contract.

II. Act No. 49 of 1921 clearly delegates to administrative officers the legislative function of fixing the rate of taxation by determining the amount of money to be raised for each year to defray the expenses of maintenance and operation, and allocating such expense among the taxpayers concerned. It thus violates the provisions of the Organic Act fixing the function of the Puerto Rico Legislature. These provisions do not differ materially from relative provisions in other constitutions.

III. Act No. 49 of 1921 deprives respondent of property without due process of law by burdening with special

taxation its ancient concessions and prescriptive rights, suspended during the operation of the contracts. Such concessions and rights were recognized and preserved by the Treaty of Paris between the United States and Spain. The concessions and rights were supposedly replaced in the contracts by a "fair equivalent". By burdening such fair equivalent, the statute in effect burdens the concessions and ancient rights.

IV. The Act further is defective under the due process clause of the Organic Act, because it does not provide the taxpayer with an opportunity for hearing and protest before the tax becomes fixed.

V. The Act is further in violation of the Organic Act in that the discriminatory character of the tax imposed and the arbitrary and unreasonable classification of taxpayers deprives respondent of the equal protection of the law. It further violates the rule that taxation shall be uniform by imposing a punitive tax upon land of a limited class in the guise of a so-called special assessment for improvements.

VI. The case does not involve the construction or application of a local law. Neither the statute nor the 1914 contracts are ambiguous and no question of construction or interpretation or application is involved. The only question before the Court is the validity of the statute under the Organic Act.

## ARGUMENT.

### I.

**Act No. 49 of 1921 is invalid in that it impairs the obligations of the contracts of August 26, 1914.**

Section 2 of the Organic Act of Puerto Rico, 39 Stat. 951; 48 U. S. C. Sec. 737, contains the provision:

“No law impairing the obligations of contracts shall be enacted.”

The whole scheme of the group of statutes under which the irrigation system was established and maintained contemplated that in the case of those whose water rights were acquired either by condemnation or relinquishment the former owners of such rights should be placed in the same position as those who never had possessed such rights. This was, of course, equitable because presumably upon the condemnation or relinquishment of their rights they received an equivalent in cash or in credits (see Statement of Facts, p. 5). The statutes, however, furnished no method of protecting those whose rights were not condemned or relinquished, except by furnishing them with a *fair equivalent* pursuant to contract. The carefully drawn recitals of the 1914 contracts and the elaborate provisions for the delivery of water under various circumstances and contingencies all bear out the idea that the contracts were intended to furnish to respondent such *fair equivalent*.

Although respondent accepted under the contracts a smaller amount of water in acre-feet than the 12,612.1 acre-feet to which it was entitled under the concessions, it is to be assumed, as indicated in the contracts, that the regularity and certainty of delivery would make up for the loss

in volume. The testimony (R. 84, 92 to 94, 97) as to the benefits derived by each of the contracting parties from the operation of the contracts would seem to be of small if any importance. For purposes of this appeal we are prepared to assume that each party to the contracts knowingly and willingly relinquished certain rights and in return derived certain benefits, and there is no evidence to indicate that the contracts were unconscionable in leaving either party at the mercy of the other. A nice appraisal of relative benefits under the contracts would not seem to be necessary to the determination of the issues herein.

There can be no doubt as to the correctness of our contention that Act No. 49 is aimed at respondent and those in the position of respondent. The very title of the Act and the wording of Section 1 thereof (App., p. 35), show this. Under Section 2 of the Act (App., p. 36), the Treasurer is directed to take into account four classes of lands. The first two classes are those subject to taxation under other provisions of the Irrigation Law either because the owners had no water rights or their water rights had been acquired by the Government. Classes 3 and 4 dealing with contracting owners of rights are the classes taxed under the Act. Respondent is in Class 4. The testimony of petitioner's witness Chapel (R. 101, 104) and the form of communication from the Treasurer to taxpayers (see figures, R. 136) show that this was the manner in which the Act was administered. The acreage shown in the example on page 136 of the Record is not actual acreage but "equivalent" acres based on the amount of water furnished. The testimony of the Government witnesses Chapel and Luchetti (R. 100, 101, 102) bears out the conclusion that Act No. 49 does not and was not designed to levy a tax upon real property, *but imposes a charge for water furnished.*



The time of the enactment of this statute lends further corroboration to our contention that its purpose was solely to deprive respondent of the benefits derived under the contracts without restoring to respondent its ancient concessions and rights, for the law was not enacted until the irrigation system had been in operation for a considerable period of time. It was not part of the scheme of taxation worked out in the group of statutes enacted between 1908 and 1913. Act No. 49 was enacted only after the Circuit Court of Appeals had made its decision in 1920 in *People of Porto Rico v. Russell & Co.* 268 Fed. 723, restraining the Government from appropriating surplus waters which under the contracts belonged to respondent. The first attempt at violation of the contracts having failed, a new effort was immediately made at the next session of the Legislature, when Act No. 49 was enacted.

It is submitted that respondent's rights under the contracts are clear, and that the purpose and effect of Act No. 49 are clear. There remains only the question whether the Act can be sustained under the provisions of the Organic Act.

On two occasions the Circuit Court of Appeals has decided that the Act impairs the obligations of the 1914 contracts, 60 F. (2d) 10; 118 F. (2d) 225. We cannot improve upon the cogent argument contained in the opinion of the court below from which we quote as follows (R. 190):

"The plaintiff had an opportunity to condemn the rights and pay their full value. If after such condemnation, the land was furnished water from the system the defendant would be in the position of one who had never possessed water rights and would be subject to assessments for construction, maintenance and operation. So also if the defend-

ant had relinquished its rights in consideration of inclusion in the district and a credit of the value of the surrendered rights against such assessments. The plaintiff made no such arrangements for payment of value. In effect, it suspended the defendant's rights without compensation and now desires to force it to pay the cost of providing it with water as though it held no rights, in spite of the contractual obligation to provide their equivalent. In such a situation the words of the Supreme Court of the United States in *Woodruff v. Trapnall*, 10 How. 190, 207 (U. S. 1850) seem particularly applicable:

'A State can no more impair, by legislation, the obligation of its own contracts, than it can impair the obligation of the contracts of individuals. We naturally look to the action of a sovereign State, to be characterized by a more scrupulous regard to justice, and a higher morality, than belong to the ordinary transactions of individuals.'

See also *Antoni v. Greenhow*, 107 U. S. 769, 795 (1882); *Hall v. Wisconsin*, 103 U. S. 5 (1880); *Green v. Biddle*, 8 Wheat. 1, 92 (U. S. 1832)'' (R. 190).

It is submitted that the authorities relied on by the Circuit Court of Appeals amply sustained its decision.

We further submit that the court below unanswerably disposes of petitioner's contention that there was no showing that the water rights or the contractual equivalent thereof were to be permanently tax free. The court states as follows:

'The plaintiff insists, however, that the tax is valid since there is no showing that the water rights or the contractual equivalent thereof were to be permanently tax free. We need not here decide whether a general property tax or other tax might validly be

imposed on the defendant's right to take water from the Jacaguas River for irrigation purposes. Suffice it to say that this is not such a tax. This is a special assessment to cover the actual current maintenance costs of the irrigation works. It is based upon a benefit which is not conferred and is in violation of a contract to provide an equivalent of free water. It is well settled that under the guise of levying taxes, a state may not impair the obligation of contracts. *Murray v. Charleston*, 96 U. S. 432 (1877) (R. 190).

In *Murray v. Charleston*, 96 U. S. 432, it appeared that the City of Charleston passed an ordinance assessing a general tax on city stock, and by the ordinance the city was allowed to retain as a tax part of the interest due on the stock. The State court held that the ordinance did not impair the obligation of the contract between the city and the holder of the stock, as the possibility of such a tax was in the contemplation of the parties when the plaintiff bought his stock. The Supreme Court held that the ordinance was void, as it impaired the obligation of the contract between the parties. The Court said at page 444:

"The constitutional provision against impairing contract obligations is a limitation upon the taxing power, as well as upon all legislation, whatever form it may assume."

Continuing, the Court said at page 448:

"There is no more important provision in the Federal Constitution than the one which prohibits States from passing laws impairing the obligation of contracts, and it is one of the highest duties of this court to take care the prohibition shall neither be evaded nor frittered away. Complete effect must be given to it in all its spirit. The inviolability of



contracts, and the duty of performing them, as made, are foundations of all well-ordered society, and to prevent the removal or disturbance of these foundations was one of the great objects for which the Constitution was framed."

See also:

*Woodruff v. Trapnall*, 10 Howard 190;  
*Fletcher v. Peck*, 6 Cranch 87;  
*Green v. Biddell*, 8 Wheaton 1, 92;  
*Hall v. Wisconsin*, 103 U. S. 5;  
*Antoni v. Greenhow*, 107 U. S. 769, 775;  
*Cooley on Taxation*, Vol. I, 4th Ed., Section 136,  
 page 318.

In *Wood v. Lovett*, 313 U. S. 362 (May 26, 1941) the Court was called upon to consider the contract clause of the Federal Constitution as applied to a sovereign state. It appeared that the Arkansas legislature enacted a statute in 1935 protecting from attack because of various irregularities the title of those purchasing tax-forfeited property from the State of Arkansas. The act was repealed in 1937, but in the interim the Commissioner of State Lands had conveyed certain properties to appellant. It further appeared that in the sale of said properties to the State in 1933 for non-payment of taxes there were certain irregularities which, but for the 1935 act, would have rendered the sale void. Notwithstanding that the Arkansas law provided for the reimbursement to the appellant of the amount paid by him for the purchase price, subsequent taxes and improvements,—a circumstance not paralleled in the case at bar,—the Court held that the 1935 statute, together with appellant's deed, constituted a contract by the State with

the appellant, which was impaired by the 1937 statute. The Court states, page 369:

“Under the settled rule of decision in this court, the execution of the State’s deeds to the appellants constituted the execution or consummation of a contract, the rights arising from which are protected from impairment by Article I, § 10 of the Constitution; and the obligation of the State arising out of such a grant is as much protected by Article I, § 10, as that of an agreement by an individual. *Fletcher v. Peck*, 6 Cranch 87, 136, 137, 139. The Act of 1935, taken in connection with the other statutes regulating the acquirement by the State, and the disposition by it, of lands sold for delinquent taxes, constituted, in effect, an offer by the State to those who might become purchasers of such lands, and the protection it afforded to the title acquired by such purchasers necessarily inured to every purchaser acting under it and constituted a contract with him.

The federal and state courts have held, with practical unanimity, that any substantial alteration by subsequent legislation of the rights of a purchaser at tax sale, accruing to him under laws in force at the time of his purchase, is void as impairing the obligation of contract (citing numerous cases).”

It does not seem necessary to multiply citations in support of the familiar rule that sovereign governments are as much bound by the obligation of contracts clause of the Constitution as private individuals (*Woodruff v. Trapnall*, 10 How. 190; *Indiana ex rel. Anderson v. Brand, Trustee*, 303 U. S. 95; *Mississippi ex rel. Robertson v. Miller*, 276 U. S. 174).

A case similar in many particulars to the one at bar is *Gulf &c. Railroad v. Adams*, 90 Miss. 559, which involved a State statute levying a privilege tax on railroads which

under their charters were exempt from State supervision as to rates within certain maximum and minimum limits.

This statute was held unconstitutional by the Supreme Court of Mississippi, which said at page 605:

“There are several things to be noted which we think demonstrate the unconstitutionality of this act in this respect beyond controversy. First. This additional privilege tax is an extraordinary tax, one over and beyond the usual privilege tax required to be paid by other railroads doing similar business in this state. Second. It is clear that the imposition of this privilege tax is an exaction made solely because of the enjoyment by the appellant of this contract privilege in its charter. It was not for the legislature to extend by the charter contract the privilege of regulating its rates within certain limits to this appellant with one hand, and then with the other, after the road had been built, practically take away the privilege by the imposition of this privilege tax. \* \* \* Fourth. This \$10 per mile additional privilege tax is a burden imposed on the corporation as a condition to its further exercise of the corporate right conferred by its charter. \* \* \* We are constrained to declare that this legislation \* \* \* violates both the contract clause of the constitution of the United States and the fourteenth amendment thereof.”

## II.

**Act No. 49 of 1921 is invalid in that it delegates to administrative officers the legislative functions of determining the amount of tax to be levied and of levying the tax.**

Section 25 of the Organic Act (39 Stat. 958; 48 U. S. Code Section 811), reads as follows:

“All local legislative powers in Porto Rico, except as otherwise provided in this chapter, shall be vested in a legislature which shall consist of two houses, one the senate and the other the house of representatives, and the two houses shall be designated ‘the Legislature of Porto Rico’ ”.

This provision is quite similar to Article I, Section 1 of the United States Constitution, which provides that,

“All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives.”

The functions of the Legislature of Puerto Rico are described in Sections 34 and 37 of the Organic Act (48 U. S. C., Secs. 821-844). Its authority extends to all matters of a legislative character not locally inapplicable (App., p. 34).

It is submitted that Act No. 49 wholly delegates the duties of the Legislature to the Treasurer of Puerto Rico and the Commissioner of the Interior. This is more than a mere delegation of the duty of making computations to determine the amount of a tax of which the rate or amount is fixed by the Legislature. The entire amount to be raised by the tax depends upon the Commissioner of the

Interior's estimates of the cost of operation and maintenance of the irrigation system, weighted or lightened by the addition or subtraction of a previous deficit or surplus, and allocated among the taxpayers according to an additional determination to be made by the Treasurer. On the first appeal to the Circuit Court of Appeals in this case, 60 F. (2d) 10, the Court stated as follows:

"Counsel for the plaintiff, however, contend that the determination of the *amount to be raised* for an ensuing year is a pure matter of computation, and that the act has pointed out how that computation shall be made. But this clearly is not so, for the amount to be raised is, by the terms of the act, to be estimated by the Commissioner of the Interior, and as this estimate involves the exercise of legislative power, it could not be delegated to the commissioner" (p. 16).

In the important recent decision of this Court, *Schechter Poultry Corp. v. United States*, 295 U. S. 495, appears the following statement (pp. 529-530) by Mr. Chief Justice Hughes:

"The Constitution provides that 'All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.' Art. I, §1. And the Congress is authorized 'To make all laws which shall be necessary and proper for carrying into execution' its general powers. Art. I, §8, par. 18. The Congress is not permitted to abdicate or to transfer to others the essential legislative functions with which it is thus vested. We have repeatedly recognized the necessity of adapting legislation to complex conditions involving a host of details with which the national legislature cannot deal directly. . . . But we said that the constant recognition of the necessity



and validity of such provisions, and the wide range of administrative authority which has been developed by means of them, cannot be allowed to obscure the limitations of the authority to delegate, if our constitutional system is to be maintained."

See also the concurring opinion of Mr. Justice Cardozo, p. 551, *et seq.*

It would seem to be well established that the exercise of the taxing power is a legislative and not an administrative function and that it therefore cannot be delegated to administrative officials. As stated by Chief Justice Marshall in *McCulloch v. Maryland*, 4 Wheat. 316, 428:

"The only security against the abuse of this power, is found in the structure of the government itself. In imposing a tax the legislature acts upon its constituents. This is in general a sufficient security against erroneous and oppressive taxation.

"The people of a State, therefore, give to their government a right of taxing themselves and their property, and as the exigencies of government cannot be limited, they prescribe no limits to the exercise of this right, resting confidently on the interest of the legislator, and on the influence of the constituents over their representative, to guard them against its abuse \* \* \*."

In *Rich Hill Coal Company v. Bashore*, 334 Pa. 449; 7 Atl. (2d) 302, decided in 1939, the Pennsylvania Supreme

Court held invalid a provision of the Pennsylvania Workmen's Compensation and Rehabilitation Act which empowered the State Department of Labor and Industry to assess a charge on all employers in the State to pay for the cost of administering the Act, the Department determining the amount of each assessment. The Court found that this was,

in effect, a tax, and held that the Act illegally delegated legislative power. We quote as follows (p. 498):

"In any event, if the assessments are upon employers regardless of their participation in the system, the section in reality provides for a tax \* \* \*, but it would be a tax levied in varying amounts at the discretion of the department. The legislature cannot delegate its power to tax to such a commission. *Wilson et ux v. Phila. School Dist. et al.*, 328 Pa. 225; *Van Cleve v. Passaic Valley Sewerage Comrs.*, 71 N. J. L. 574; *People of Porto Rico v. Havemeyer*, 60 F. (2d) 10."

*Van Cleve v. Passaic Valley Sewerage Commissioners*, 71 N. J. Law, 574, is a case very much in point. It appeared that to defray the cost of a sewerage system the amount to be raised by the taxing statute was committed solely to sewerage commissioners within maximum limits as to the matter of construction and without any limit in the matter of maintenance. The New Jersey Court of Errors and Appeals held this to be a wrongful delegation of legislative function and stated (p. 581):

"Every system of taxation consists of two parts—the elements that enter into the imposition of the tax, and the steps taken for its assessment and collection. The former is a legislative function conserved by constitutional prescriptions; the other is mere machinery. The latter may be delegated to other than governmental agencies; not so the former. Matters of computation, appraisement, adjustment, and such like, involving mere certainty of detail, follow the delegable power. \* \* \* But no element that enters essentially into the tax itself may be so delegated."

The general rule is well stated in *Corpus Juris*, Vol. 61, p. 84:

"The power of taxation, existing exclusively in the legislature, cannot, unless the constitution so provides, be delegated to either of the other departments of the government, or to any individual, private corporation, officer, board, or commission, although duties in reference to taxation which are merely advisory or ministerial in their nature, such as computing the levy, may be delegated. . . . nor can it authorize subordinate governmental agencies to exercise the power of taxation, without definitely fixing the rates of the levy or amount to be collected."

### III.

**Act No. 49 is invalid as depriving the respondent of its property without due process of law by taking away its water rights—or the equivalent furnished by the 1914 contracts—under the Spanish concessions which are preserved by the Treaty of Paris.**

Section 2 of the Organic Act provides in part as follows:

"*Bill of rights and restrictions.* No law shall be enacted in Porto Rico which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws.

"Private property shall not be taken or damaged for public use except upon payment of just compensation ascertained in the manner provided by law."

We submit that respondent's water rights under the Spanish concessions, or their "fair equivalent" provided by the contracts of August 26, 1914, are, in whole or in



part, taken away by Act No. 49. That franchises are property is unquestionable.

*Gulf, etc., Railroad Company v. Hewes*, 183 U. S. 66, 77;

*Monongahela Navigation Co. v. United States*,  
148 U. S. 312, 341;

*Wilmington R. R. v. Reid*, 13 Wall. 264, 268.

Although the Spanish concessions were suspended while the 1914 contracts remained in force, such suspension was only effected by a contract designed to provide respondent with an "equivalent". (See *People of Porto Rico v. Russell & Co.* 268 F. 723, 729). If that equivalent be removed or burdened in the guise of taxation and the concession be not restored, this is tantamount to confiscating the concession.

These concessions are recognized and preserved by the Treaty of Paris which is controlling on the Insular legislature.

*Malloy's Compilation of Treaties, etc.*, Vol. 2,  
pp. 1690, 1692, 1693—Articles VIII, IX (App.,  
p. 34).

As the Attorney General of the United States said in a situation involving water rights in Puerto Rico (22 Op. Atty. Gen. 546, 548):

"If at the time the treaty of Paris took effect the applicant had a completed and vested right to the use of the waters of the River Plata, that right will be respected by the United States."

The provisions of Article VI of the United States Constitution declaring treaties to be the supreme law of the land are binding upon Puerto Rico, and neither Puerto

Rico nor any states or municipal corporations can interfere therewith.

*Bacardi Corp. of America v. Domenech*, 311 U. S. 150;

*Baker v. Portland*, 2 Fed. Cas. No. 777;

*Worcester v. Georgia*, 6 Pet. 515, 561.

#### IV.

**Act No. 49 further violates the due process clause of the Organic Act by failing to grant to the taxpayer an opportunity for a hearing before the taxes become fixed.**

The persons subject to taxation or assessment under Act No. 49 are given no right or opportunity for a hearing before the taxes become fixed. It is submitted that in this respect the Act further contravenes the due process clause of the Organic Act (App., p. 34).

*Londoner v. Denver*, 210 U. S. 373, 385:

“ \* \* \* where the legislature of a State \* \* \* commits to some subordinate body the duty of determining whether, in what amount, and upon whom it shall be levied, and of making its assessment and apportionment, due process of law requires that at some stage of the proceedings before the tax becomes irrevocably fixed, the taxpayer shall have an opportunity to be heard, of which he must have notice, either personal, by publication, or by a law fixing the time and place of the hearing.”

See also;

*Turner v. Wade*, 254 U. S. 64;

*Coe v. Armour Fertilizer Works*, 237 U. S. 413, 425;

*Security Trust Co. v. Lexington*, 203 U. S. 323.

The only provision in Act No. 49 regarding levy and collection of the tax appears in the last paragraph of Section 2, as follows:

"This tax shall be levied and collected by the Treasurer of Porto Rico at the same time as any other tax imposed by the Public Irrigation Law" (App. p. 37)

The quoted provision provides merely for the time of levy and collection.

## V.

**Act No. 49 denies to respondent the equal protection of the laws and further violates the requirement of the Organic Act that the rule of taxation in Puerto Rico shall be uniform.**

The Organic Act of Porto Rico contains the following provisions:

"§737. *Bill of rights and restrictions.* No law shall be enacted in Porto Rico which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws."

"The rule of taxation in Porto Rico shall be uniform."

It is clear from a reading of Act No. 49 that it is aimed especially at those whose rights are protected by contracts, and there is no basis for such an attempted classification. The mere fact of classification is not sufficient; it must be one based upon some reasonable ground and cannot, as here, be a mere arbitrary selection.

*Gulf, Col. & Santa Fe Railway v. Ellis*, 165 U. S. 150, 165;

*Cotting v. K. C. etc. Co.*, 183 U. S. 79, 106.

The rule as to uniformity is well stated in *Gilman v. City of Sheboygan*, 2 Black 510, 517, as follows:

"The uniformity must be coextensive with the territory to which it applies. If a State tax, it must be uniform all over the State. If a county or city tax, it must be uniform throughout the extent of the territory to which it is applicable. But the uniformity in the rule required by the Constitution does not stop here. It must extend to *all property* subject to taxation, so that all property may be taxed alike—equally—which is taxing by uniform rule."

The tax certainly cannot be sustained as a special assessment for benefits received, and by the very language of the statute, it cannot be construed to be a general property tax upon all lands in Puerto Rico. The tax is expressly confined to lands "which for irrigation purposes are supplied with water from the Southern Coast Public Irrigation System", and which are not otherwise taxable under the Irrigation Law (App., pp. 35, 36). It is indeed a special law designed for the sole purpose of reaching those in the position of respondent. As the court below stated (R. 190):

"This is a special assessment to cover the actual current maintenance costs of the irrigation works. It is based on a benefit *which is not conferred* . . ."  
(Italics ours.)

As the law cannot be sustained as a general property tax nor as a special assessment for benefits received, it would seem that it fails to meet the test which would require that it be levied uniformly on all taxpayers.

The same circumstances which render the act invalid under the equal protection provisions of the Organic Act would seem to deprive it of the necessary uniformity.

## VI.

**The case does not involve the construction or application of a local law.**

Petitioner strives to establish in Point IV of his brief (p. 23) and also in the petition (p. 7) that this case involves a decision of the Insular Supreme Court interpreting and applying an Insular statute, and seeks to obtain the benefit of the rule that a decision of that court will not be reversed in such cases unless it is "patently erroneous" or "inescapably wrong". Respondent submits that the decision of the Supreme Court of Puerto Rico is clearly erroneous. Nevertheless we do not see that any question of construction or interpretation or application is here involved. The words of the statute are unambiguous and its purpose and application are clear. Nor is there any ambiguity in the meaning of the 1914 contracts (R. 24, 41). The only question before this Court is whether Act No. 49 contravenes the fundamental law of Puerto Rico, contained in the Organic Act. As to such questions it cannot be maintained that the decision of the Insular Court should be deemed final as this would deprive those whose rights are wrongfully invaded by the local legislature of any recourse except an appeal to the local courts. This was not the intention of Congress, and there is no warrant for the contention that the decisions of the local courts on questions of constitutional rights come within the protection of the rule mentioned by petitioner.

### Conclusion.

The judgment appealed from should be affirmed in all respects.

All of the circumstances in this case indicate that the People of Puerto Rico has not dealt in good faith with respondent in respect of its contractual rights. It seems apparent that the Government has deliberately attempted to deprive respondent both of its ancient rights and concessions, temporarily suspended by the contracts, and of the benefits accruing to respondent from the contracts themselves. As stated in *Woodruff v. Trapnall*, 10 How. 190, 207 (*supra*, pp. 20, 21):

"A State can no more impair, by legislation, the obligation of its own contracts, than it can impair the obligation of the contracts of individuals. *We naturally look to the action of a sovereign State, to be characterized by a more scrupulous regard to justice and a higher morality, than belong to the ordinary transactions of individuals.*" (Italics ours.)

January, 1942.

Respectfully submitted,

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## Appendix.

### Excerpts from the Organic Act of Porto Rico, Title 48, U. S. Code:

§ 737. *Bill of rights and restrictions.* No law shall be enacted in Porto Rico which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws.

No law impairing the obligation of contracts shall be enacted.

Private property shall not be taken or damaged for public use except upon payment of just compensation ascertained in the manner provided by law.

The rule of taxation in Porto Rico shall be uniform.

§ 811. *Legislature; designation of.* All local legislative powers in Porto Rico, except as otherwise provided in this chapter, shall be vested in a legislature which shall consist of two houses, one the senate and the other the house of representatives, and the two houses shall be designated "the Legislature of Porto Rico."

§ 821. *Legislative power.* The legislative authority shall extend to all matters of a legislative character not locally inapplicable.

### Excerpts from Treaty of Paris December 10, 1898 (Malloy's Compilation of Treaties, etc., Volume 2, pp. 1692, 1693):

#### Article VIII.

In conformity with the provisions of Articles I, II and III of this treaty, Spain relinquishes in Cuba, and cedes in

Porto Rico and other islands of the West Indies, in the island of Guam, and in the Philippine Archipelago, all the buildings, wharves, barracks, forts, structures, public highways and other immovable property which, in conformity with law, belong to the public domain, and as such belong to the Crown of Spain.

And it is hereby declared that the relinquishment or cession, as the case may be, to which the preceding paragraph refers, cannot in any respect impair the property rights which by law belong to the peaceful possession of property of all kinds, of provinces, municipalities, public or private establishments, ecclesiastical or civic bodies, or any other associations having legal capacity to acquire and possess property in the aforesaid territories renounced or ceded, or of private individuals, of whatsoever nationality such individuals may be.

#### Article IX.

The civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by the Congress.

LAWS OF PORTO RICO—1921, p. 366.

No. 49

#### AN ACT.

FIXING A TAX ON CERTAIN LANDS USING WATER FROM THE SOUTHERN COAST PUBLIC IRRIGATION SYSTEM, ON WHICH LANDS NO TAX WHATSOEVER WAS LEVIED UNDER THE PUBLIC IRRIGATION LAW, AND FOR OTHER PURPOSES.

*Be it Enacted by the Legislature of Porto Rico:*

SECTION 1. That a special tax is hereby levied in addition to other taxes already fixed by law, on all parcels of

land which for irrigation purposes are supplied with water from the southern coast public irrigation system constructed and in operation pursuant to the provisions of the Public Irrigation Law and amendments thereto, but which under the present Irrigation Law in no way contribute to the payment of expenses for the maintenance of said system.

SECTION 2. That the tax to be levied on each tract of land receiving water from the irrigation system, but which under the law in force does not contribute towards defraying the cost of such system, shall be classified as follows: The Treasurer of Porto Rico shall have charge of fixing the total number of acres receiving water from the irrigation system which includes: (1) tracts of lands subject to taxation pursuant to the provisions of the public irrigation law and amendments thereto, for the purpose of reimbursing the cost of the irrigation works; (2) tracts of land to which the Irrigation Commission acknowledged the right to the use of water or to which such right was acknowledged by the courts in cases of appeal, as rights acquired under the law for the use of water under prior concessions; (3) tracts of land irrigated with water delivered in accordance with acquired rights or concessions which have not been assigned, which said water, pursuant to the terms of the contracts entered into with the Commissioner of the Interior or because of decisions of the Irrigation Commission, is delivered in whole or in part and is measured at the canals of the Irrigation Service system, and such tracts shall be determined by dividing the value of the said concessions in acre-feet per year, as the same may be or shall have been fixed by the Commissioner of the Interior, by the Irrigation Commission or by decision of the courts, by four,—that is to say, by the number of acre-feet per year established by the Public Irrigation Law as a normal rate for delivery per acre for the formation of the irrigation district; (4) parcels of land irrigated by water supplied because of acquired rights or concessions which have not been

assigned, which said water, pursuant to the terms of the contracts entered into with the Commissioner of the Interior or under decisions of the Irrigation Commission, is taken and measured in the rivers at the points of intake indicated in the said concessions; and such tracts shall be determined by dividing the value of the said concessions in acre-feet per year, as the same may be or as shall have been fixed by the Commissioner of the Interior, by the Irrigation Commission or by decision of the courts in cases of appeal, by five. The Treasurer of Porto Rico shall then take amount estimated or certified to as estimated by the Commissioner of the Interior for defraying the cost of operations and maintenance of the irrigation system during the following fiscal year (as provided under Section 11 of Act 128, approved August 8, 1913, which amends the Irrigation Law approved September 18, 1908), and shall add thereto or subtract therefrom, as the case may be, any resulting deficit between or surplus over, the amount expended and certified to as expended by the Commissioner of the Interior for expenses of operation and maintenance of the irrigation system during the preceding fiscal year, and the amount estimated or certified to as estimated by the Commissioner of the Interior for defraying the cost of operation and maintenance of the irrigation system during the aforesaid preceding fiscal year. The Treasurer shall then divide the amount so determined by the total number of acres computed as hereinbefore provided, and the result shall be and shall constitute the tax per acre which shall be levied during said subsequent fiscal year on all tracts supplied with water from the southern coast public irrigation system, and which in no other manner are subject to the payment of a tax to meet the cost of the said irrigation system.

This tax shall be levied and collected by the Treasurer of Porto Rico at the same time as any other tax imposed by the Public Irrigation Law, and the moneys collected shall be covered into the Insular Treasury to the credit of a special trust fund known as the "Irrigation Fund," to be

invested in the same manner and for the same purposes provided by the Public Irrigation Law and laws amendatory thereof.

SECTION 3. All laws or parts of laws in conflict herewith are hereby repealed.

SECTION 4. This Act shall take effect ninety days after its approval.

*Approved, July 8, 1921.*

**Extracts from the Irrigation Law of Porto Rico (Laws of Porto Rico, Special Session, 1908, pages 44 to 70.)**

### AN ACT

TO PROVIDE FOR THE CONSTRUCTION OF AN IRRIGATION SYSTEM, AND TO PROVIDE REVENUES THEREFOR; FOR THE TEMPORARY APPROPRIATION OF TWO HUNDRED THOUSAND DOLLARS TO BEGIN SUCH WORK, AND FOR OTHER PURPOSES.

*Be it Enacted by the Legislative Assembly of Porto Rico:*

Section 1.—The sum of two hundred thousand dollars, or so much thereof as may be necessary, is hereby appropriated out of any moneys in the Treasury not otherwise appropriated, for the purpose of carrying to completion the preparation of working plans and specifications for the construction of an irrigation system for the district situated approximately between the river Patillas on the east and the river Portugues on the west, and irrigable lands on both sides of both rivers and for the commencement and prosecution of the work of construction thereof, and expenses in connection therewith, until such time as sufficient funds shall be available in the Treasury from the sale of the bonds provided for such purpose by legislative enactment.



Section 3.—The proceeds of the sale of the bonds and all moneys accruing by reason of assessments of taxes and sales of water and power within the irrigation district shall, subject to the provisions of Section 29 of this Act, be deposited in the Treasury of Porto Rico, in a trust fund to be known as the "Irrigation Fund", which fund may be subdivided for statistical purposes as the Auditor may prescribe. All expenditures for the construction and maintenance of the irrigation system, and all payments of interest and principal of any debt incurred for the construction of the said system, shall be payable from the said trust fund upon warrant of the Auditor countersigned by the Governor.

Section 11.—Should it at any time appear that there is a surplus of water over and above the amount necessary to irrigate all the lands of the irrigation District, the Commissioner of the Interior shall proceed to sell such surplus water, on public calls for bids upon terms to be approved by the Executive Council, the proceeds of such sale to be covered into the Irrigation Fund.

Section 12.—The irrigation engineer herein provided, his officers, agents, or employees, shall have the right to enter, after notifying the owner or his representative, upon any lands to make surveys and to locate and establish any of the works contemplated or embraced in said irrigation system, including the lines of any canal, road, tunnel, reservoir site, aqueduct, power station, transmission lines or other requisite, but indemnity shall be paid to the owner for such damages as he may incur in consequence of said works. The Commissioner of the Interior shall have power, when necessary, to initiate suits for condemnation in the name of The People of Porto Rico for the acquisition of any land or right embraced within the approved plans of the said irrigation project, and for the purpose of such condemnation proceeding all land and water rights, all rights



of way for the transmission of water and electric currents; all sites for reservoirs, canals, roads, tunnels, aqueducts, ditches, power stations, and other things embraced in and contemplated by said irrigation plan so approved, are hereby declared to be works of public utility, and as such are hereby declared subject to the power of eminent domain and open to expropriation proceedings in the manner provided by law. *Provided, however*, that all said rights and things, together with any existing and outstanding water rights not theretofore surrendered to The People of Porto Rico may be made subject of condemnation proceedings without compliance with those provisions of law requiring a declaration of public utility by the Executive Council pursuant to the Act approved March 12, 1908, entitled "An Act to amend an act entitled 'An Act to provide for the condemnation of private property for the purposes and under the conditions therein named', approved March 12, 1903," or any other provisions relating to declarations of public utility *and provided, further* that the Executive Council shall at all times have authority to acquire for said irrigation system such rights and things wherever possible, by settlement out of court to avoid condemnation proceedings.

Extracts from the 1913 Amendments to the Irrigation Law of Porto Rico (Laws of Porto Rico, Extraordinary Session, 1913, pages 54 to 84.)

## AN ACT

TO AMEND CERTAIN SECTIONS OF THE PUBLIC IRRIGATION LAW, APPROVED SEPTEMBER 18, 1908, AS AMENDED;

TO AMEND CERTAIN OTHER LAWS RELATING TO THE IRRIGATION SYSTEM, AND THE ISSUE OF BONDS THEREFOR;

TO PROVIDE FOR THE FORMATION OF A TEMPORARY AND A PERMANENT IRRIGATION DISTRICT;

TO PROVIDE THE NECESSARY ADDITIONAL FUNDS FOR THE COMPLETION OF THE IRRIGATION SYSTEM, AND FOR MEETING THE OBLIGATIONS OF THE OUTSTANDING IRRIGATION BONDS, AND FOR THE OPERATION AND MAINTENANCE OF THE IRRIGATION SYSTEM UNTIL THE COMPLETION OF THE SAME, OR UNTIL SUFFICIENT FUNDS MAY BE RAISED THEREFOR FROM THE ASSESSMENTS UPON THE IRRIGABLE LANDS WHICH SHALL BE INCLUDED IN THE TEMPORARY OR IN THE PERMANENT IRRIGATION DISTRICTS HEREIN PROVIDED FOR, OR FROM OTHER REVENUES DERIVED FROM THE SAID IRRIGATION SYSTEM; AND FOR OTHER PURPOSES.

*Be it enacted by the Legislative Assembly of Porto Rico:*

SECTION 2.—That the said Irrigation Commission shall have the power, and are hereby directed, to fix, according to the provisions hereinafter contained, the geographical boundaries of both a temporary and a permanent irrigation district; to determine what irrigable land shall be included therein; and to determine, as hereinafter provided, the value of water rights or concessions, and the basis for the computation of credits to be given on account thereof, on the taxes to be assessed as hereinafter provided upon the lands to which the said water rights or concessions are appurtenant.

SECTION 7.—During the existence of the temporary irrigation district the Irrigation Commission shall have the power and is hereby directed to fix the boundaries of a permanent irrigation district, and to determine what irrigable lands are to be included therein. For the purpose of determining the said permanent irrigation district, the Irrigation Commission shall examine critically each tract or local subdivision which might be included in the said permanent irrigation district, examining not only the lands which were included in the temporary irrigation district, but also any lands not included in the said temporary irrigation district, but which, in their judgment, might be included in the said permanent irrigation district, with a view to determining what lands are so located and of such a nature that they can be profitably and successfully irrigated under the Public Irrigation Law, as amended, and as herein provided. It shall give due consideration to all water rights or concessions heretofore granted, also, as far as practicable, to the results and effects of the operation of the irrigation system during the existence of the temporary irrigation district, and shall include in the said permanent irrigation district such lands, and only such lands, as in the judgment of the Irrigation Commission are so located and of such a nature that they will receive by forming a part of the permanent irrigation district a benefit greater in amount than the total cost or burden imposed by law upon the said lands, as hereinafter provided.

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The said Irrigation Commission shall determine as to each water right or concession which is appurtenant to any tract of land, and which has been relinquished or transferred to The People of Porto Rico, and which shall not already have been valued by agreement reached between a representative or representatives of The People of Porto Rico and the owner or owners of the land to which the said water right or concession is appurtenant, its fair equivalent in value, stated in acre feet, per annum, reasonably

distributed throughout the year; *Provided, however,* That in no case shall the equivalent allowed for any such water right or concession be greater than the amount of water granted by, and beneficially used under, the said water right or concession as originally granted or as legally construed or limited.

The said Irrigation Commission shall then determine the basis for the computation of credits to be given on account of each relinquished water right or concession appurtenant to land included in the permanent irrigation district, upon the taxes assessed upon the said land, complying in all respects with the provisions of the contract, if any, for the relinquishment of the said water right or concession, and giving due consideration, in determining the basis for the said computation, to the conditions of the said contract of relinquishment and the extent to which the said water right or concession has, in effect, been relinquished. The Irrigation Commission shall compile a report of their findings as to the above basis for the computation of credits on taxation, stating in each case the percentage which the said credit shall bear to the total taxation which, but for such credit, would fall upon the lands to which the said water rights or concessions are appurtenant.

SECTION 11.—The amount that shall be assessed and levied upon a given tract of land included in the permanent irrigation district shall be determined as follows:

The Treasurer of Porto Rico shall calculate the amount of the interest and principal or sinking fund due upon outstanding irrigation bonds for the ensuing fiscal year and shall add thereto the total amount due upon credits for the ensuing year on account of water rights or concessions; and shall further add thereto the amount estimated and certified as estimated to him by the Commissioner of the Interior for the cost of operation and maintenance of the irrigation system for the said ensuing fiscal year. He shall then either add to or subtract from the amount so obtained the esti-

mated amount of any deficit or surplus, as the case may be, existing in connection with the Irrigation Fund from the operations of the current fiscal year. From this amount he shall subtract the amount estimated and certified as estimated to him by the Commissioner of the Interior as the receipts for the ensuing fiscal year from any water power developed in connection with the irrigation system (until such time as the total bonded indebtedness incurred on account of the irrigation system shall have been paid in full); and the amount estimated and certified as estimated to him by the Commissioner of the Interior as receipts for the ensuing fiscal year from any other sources except from the issues of bonds and from special assessments herein provided for to be levied upon the land in the permanent irrigation district. To the amount so determined the Treasurer shall add an amount equivalent to two per centum of the total as a margin of safety for delayed collections, and the amount thus determined by the Treasurer of Porto Rico, subject to the limitations and provisions hereinafter set forth, shall be and constitute the total sum assessed for the said fiscal year, and the same shall be levied upon the lands at the time included in the permanent irrigation district (including any lands owned by The People of Porto Rico which form part of the said district, which lands shall be liable for and pay taxes levied hereunder in the same manner as the other lands included in the said irrigation district);

The amount of credit on taxes to which any tract of land having a water right or concession shall be entitled on account of the relinquishment of the same shall be such percentage of such taxes as shall have been determined by the Irrigation Commission as hereinbefore provided.

No tract of land included in the permanent irrigation district shall pay any tax until it shall have received or have been offered water from the irrigation system for a period of twelve months (said water to have been received after the inclusion of the said land in the temporary irri-



gation district, or, if the said land is first included in the permanent irrigation district, after the said inclusion); but thereafter the said tract of land shall be liable at the regular assessment dates to the same assessments as would have been the case had all the lands in the permanent irrigation district been assessed under the provisions of this section; *Provided*, That the said tract of land shall pay a tax for the portion of the half year (either fiscal or calendar, as the case may be), if any, remaining after the completion of the said period of twelve months, for which no taxes are paid in accordance with the foregoing provisions, and the tax due for any such portion of a half year shall be payable upon the first of the month succeeding the completion of the said period of twelve months for which no taxes are paid in accordance with the foregoing provisions.

Assessments under the foregoing provisions shall be made upon each particular tract of land in the proportion that the area of such tract of land bears to the whole number of acres included in the said permanent irrigation district.

SECTION 13.—In the case of any land carrying a water right or concession of which the source of supply is destroyed or impaired by the construction or operation of the irrigation system, which shall not have been relinquished or surrendered to The People of Porto Rico, such land shall be entitled to receive from the irrigation system an amount of water which is the reasonable equivalent in value of the said water right or concession.

The Commissioner of the Interior is hereby authorized to negotiate with the owner or owners of such water rights or concessions, and with the owner or owners of any water rights or concessions heretofore relinquished or surrendered on condition that the lands to which they are appurtenant should form part of the irrigation district, and which lands have not been included by the Irrigation Commission, and the said Commissioner of the Interior shall be em-



powered to enter into agreements with such owner or owners as to the amount of water and the time, place and conditions of delivery thereof; which shall be delivered to the lands to which the said water rights or concessions are appurtenant as the fair equivalent in value thereof, with the power on behalf of the Irrigation Service to enter into agreement with such owner or owners for the relinquishment to The People of Porto Rico of such water rights or concessions, and for the delivery to the lands to which the said water rights or concessions are appurtenant of such fair equivalent. Before entering into any such agreement the Commissioner of the Interior shall consult the Attorney General of Porto Rico as to the validity and legal status of the water rights or concessions involved.

In the case of any water right or concession in connection with which no such contract or agreement is made prior to January 1, 1914, the Irrigation Commission shall have the power to decide as to the validity and the legal status of any such water right or concession; and in the case of valid and subsisting water rights or concessions to determine what amount of water must be delivered by the Irrigation Service to the lands to which such water rights or concessions are appurtenant.

